

DECISION- WALPOLE ZONING BOARD OF APPEALS CASE NO. 06-17

APPLICANT
William Germaine

FILE

LOCATION OF PROPERTY INVOLVED
86 Oak Street
Walpole Assessors Map 41, Parcel 4, Zoning District RB

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TOWN OF WALPOLE
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APPLICATION

A Special Permit under Section 5-D. of the Zoning Bylaw to allow filling of the backyard up to seven hundred twenty-five (725) +/- cubic yards, located at 86 Oak Street, Walpole MA, 02081.

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On October 4, 2017, a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information as to the granting of a Special Permit request. Said public hearing was closed and voted on October 4, 2017.

The following members were present and voting:

Matthew Zuker, Chairman
Craig Hiltz, Clerk
Susanne Murphy, Member
Mary-Jane Coffey, Member
Robert Fitzgerald, Associate Member

VOTE OF THE BOARD

A motion was made by Craig Hiltz and seconded by Robert Fitzgerald to grant a Special Permit under Section 5-D. of the Zoning Bylaw to allow filling of the backyard up to seven hundred twenty-five (725) +/- cubic yards, located at 86 Oak Street, Walpole MA 02081, with conditions.

The vote was **(5-0-0) in favor** (Zuker, Hiltz, Murphy, Coffey and Fitzgerald voting), therefore the Request for a **Special Permit** is hereby **granted, subject to the following conditions:**

1. Materials will be tested by a qualified professional, and any hazardous materials will be managed under the Massachusetts DEP Regulations.
2. A landscape/screening plan shall be submitted to the Town Engineer based upon consultation with the Tree Warden of the Town.
3. Downspouts shall be installed in accordance with the plan presented at the public hearing on October 4, 2017.
4. Trucking on and off site shall be conducted in accordance with the plan presented at the

public hearing, of October 4, 2017, including location and route.

5. All activities under the Special Permit shall be completed within one (1) year.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-D. to allow the requested filling of the backyard up to seven hundred twenty-five (725) +/- cubic yards in the Zoning District RB. The Board finds that the activity is not injurious or dangerous and shall not result in negative impacts to the environment or public and that the proposed work keeps the property in character with the surrounding neighborhood. Accordingly, the Board has determined that the Special Permit requested is warranted.

The Board made the following findings pursuant to Section 5-D.6.:

A. Whether the activity is injurious or dangerous to the public health or safety or harmful to the amenities of the vicinity of the Town.

The Board finds that the activity is not injurious or dangerous due to the Condition imposed that will require all materials be tested by a qualified professional and managed under DEP Regulations.

B. Whether the activity requires the transportation of materials over particular public streets on which undue congestion or hazards will be created, or on which undue injury to the roadway surface will be sustained.

The Board finds that no undue hazards will be created, as the Board imposed a Condition pertaining to trucking on and off site.

C. Whether the activity will result in significant negative impacts to the natural environment.

The Board finds that activity shall not result in negative impacts to the natural environment, as all materials will be tested and managed accordingly.

D. Whether the activity will result in a change of topography or cover disadvantageous to the most appropriate use of the land.

The Board found that the activity will not result in a change in topography that is disadvantageous because of the staggered wall design and the adherence to MA DEP Stormwater Management Regulations.

E. Whether the activity will be terminated within one (1) year.

The Board imposed a Condition requiring that all activities shall be completed within one (1) year.

FURTHER FINDINGS

The Board also made the following findings pursuant to Section 2.2.B.(1) of the Zoning Bylaw:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds this condition satisfied based on the findings noted above pursuant to Section 5-D.6. of the Zoning Bylaw.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that as shown on the plans submitted at the public hearing, the routes and time frames of trucking activity will be limited to specific times of operation as to not create vehicular and pedestrian traffic to adversely affect the immediate neighborhood. As such, the Board finds that this condition is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

This proposal is residential in nature and is for the filling and leveling of the Applicants' backyard. Thus, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that as shown on the plans submitted with the Application this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the proposed project is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes. All materials will be tested and managed accordingly, thus, this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed filling of the backyard will not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard as to adversely affect the neighborhood due to the plans submitted at the public hearing which displayed that there is no expected additional fill to be delivered or removed, and the hours of operation if there is minimal fill to be delivered or removed, will be within the scheduled hours set forth in the plan, during the day, to avoid nuisances as to adversely affect the immediate neighborhood. Lastly, the Applicant will have installation of downspouts to connect to the proposed drywell as the primary way to introduce runoff into the recharge drywell system for proper drainage as to not adversely affect the surrounding properties and immediate neighborhood. Thus, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The filling and leveling of the Applicants backyard will not change the character of the immediate neighborhood, and the Applicant will have all landscaping/screening submitted to the Town Engineer based upon

consultation with the Tree Warden, as imposed in the condition above. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.


The Board finds that the proposed filling and leveling of the Applicants' backyard is compatible with the purpose of the zoning district in question.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS



Craig W. Hiltz, Clerk

CH/am

cc: Town Clerk Engineering Planning Board Applicant

Board of Selectmen Building Inspector Conservation Commission Abutters

This decision was made on October 4, 2017 and filed with the Town Clerk on October 17 , 2017.